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Report of the Committee of Inquiry into the flogging of Gangaram Chavan, a prisoner in Bijapur Jail

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REPORT OF THE COMMITTEE OF INQUIRY INTO THE FLOGGING OF GANGARAM CHAVAN, A PRISONER IN BIJAPUR JAIL.

We, the Chairman and Members of the Committee appointed under Government of Bombay, Home Department, Resolution No. 775/4, dated the 28th May 1938, have the honour to submit our report. Under that resolution we had to inquire into the circumstances under which Gangaram Chavan, a prisoner in the Bijapur District Prison, was ordered to be whipped and to report—

(*a*) whether the order was proper and justifiable ; and

(*b*) whether flogging as a jail punishment should be retained ; and, if so, under what circumstances and subject to what safeguards.

2. The members of the Committee received the Government Resolution on the 29th of May and met on the 30th. Chavan was whipped on the 5th of May 1938 ; and in order to ascertain the circumstances from all the persons concerned while the facts were fresh in their memory, we decided to examine these persons without loss of time. Accordingly on the 31st of May we recorded the statements of Gangaram Chavan and his two companions Ambaji Parit and Vyankappa Madur who had been transferred from the Bijapur Jail to Yeravda. The same evening we left for Bijapur and arrived there on the 1st of June. We visited the jail in the morning and had a plan of the jail (exhibit 9) put in ; and we examined in the afternoon the Superintendent, the District Magistrate, and Mr. A. C. Angadi, a non-official visitor who had been to the jail on the 5th soon after the flogging. On the 2nd we again visited the jail and recorded the statements of the Jailor and the Jamadar Gaibusing. We also selected at random two prisoners, Yamnya and Hussain, who were in the jail on the 5th of May and who might have seen and heard some, if not all, the incidents connected with the whipping. We left Bijapur the same evening, arrived in Poona on the 3rd and paid a surprise visit to Nasik on the 4th and without notice even to the Superintendent, examined at length three, and more shortly six, of the prisoners belonging to the Criminal Tribes who were said to have joined in the disturbance in the Bijapur Jail on the 5th May and who were subsequently transferred to Nasik.

3. All the prisoners examined were given to understand that they had nothing to fear and nothing to hope in making the statements.

4. We would at the outset clearly state that we have thought it desirable to exclude all political considerations entirely from our minds. Our stand-point is that of the citizen and the tax-payer.

5. The circumstances of the flogging are a pure question of fact and of the mentality of the actors. Whether the order of flogging was proper and justifiable would depend on whether it fell within the purview of rule 703 (14) (*c*) of Chapter XXXIII of Part I of the Bombay Jail Manual which contains the rules made by the Local Government under sections 59 and 60 of the Prisons Act (IX of 1894).

6. That rule runs as follows :—

"Whipping, provided that the number of stripes shall not exceed thirty—

(*a*) Whipping shall be inflicted with a cane on the bare buttocks which shall be covered with a thin cloth soaked in antiseptic solution. The cane must not exceed half an inch in diameter and in the case of juveniles a lighter one shall be used. The drawing stroke is forbidden and whipping shall not be executed in instalments.

(*b*) The Superintendent and Medical Officer or Medical Subordinate shall be present when this punishment is inflicted.

(*c*) Whipping shall only be ordered as a punishment for the following offences :—

(*i*) Mutiny ;

(*ii*) Conduct seriously affecting the discipline of the jail or incitement thereto ;

(*iii*) Serious assaults on any public servant or visitor ;

(*iv*) After other punishments have failed in the case of offences of a specially grave nature."

7. We now proceed to weigh the evidence as to the circumstances and record our considered and unanimous findings on them. In weighing the evidence we place first and foremost, admissions, next, the written record made immediately after

the flogging and before there was any question of an inquiry such as the present, and last, the oral evidence.

8. Thus weighed, the admitted circumstances are many, the disputed points but few. In fact that latter for all practical and important purposes reduce themselves to four mentioned in paragraph 21 below; and even on these, for the reasons which will appear, we entertain no doubts and have no hesitation in recording our findings.

9. We commence with the statement (exhibit 2) of the Chief party concerned, Gangaram Chavan, including his history as it appears therein.

10. Gangaram is a young man of about 18 or 20 and a Pardhi by caste. He belongs, therefore, to a Criminal Tribe. His parents are actually in the Criminal Tribe Settlement of Sholapur and he was born there and was educated in the school there up to the 5th standard Marathi. He was engaged in the Sholapur Mills from about 1932 to 1934 but was dismissed for taking part in a strike. He along with his elder brother and his wife claims to cultivate some lands six miles from Sholapur. But he admits that his main occupation, as soon as he left the mill, was that of a peon of the Lal Bavta, Girni Kamgar (Red Flag Mill-hands) Union on a pay of Rs. 15 per month. Ambaji Parit was also one of the members of the Lal Bavta Union. Chavan states that one Karhadkar was the President of the Union and that the leader was Mr. Khedgikar, M.L.A.

11. On the 22nd of March 1938 nine men including accused No. 1 Raghunath Karhadkar, accused No. 5 Ambaji Parit and accused No. 6 Gangaram Chavan were convicted by the Special Magistrate, First Class, Sholapur, in Criminal Case No. 1 of 1938 under sections 143, 147, 506 and 114, Indian Penal Code, and sentenced to various terms of imprisonment ranging from 6 months to 9 months. From the judgment (exhibit 30) it appears that the Lal Bavta Union and other bodies decided to celebrate the 14th of February 1938 as a Political Prisoners' Release Day by a Hartal. Three processions were formed and in order to compel the mills and the workers therein to stop work, stones were thrown, windows were damaged and persons injured. Ambaji Parit and Gangaram Chavan were found by the Magistrate to have been among the ring-leaders at the head of the mob shouting slogans, exhorting mill workers residing in the Criminal Settlement and the surrounding locality and intimidating them

from going to work in the mills. On the day following the sentence Ambaji Parit and one Vyankappa Madur apparently convicted in a similar but separate case for similar conduct, were along with Chavan and others sent to the Bijapur District Jail. Of the ten prisoners, four had been classed as "B" class by the trying Magistrate. Subsequently, first two and then a third were put into the same class by Government and from and after the 24th April out of the ten these three alone, namely Chavan, Parit and Madur, remained in the Bijapur Jail and in the "C" class. On medical examination Chavan was classified by the Medical Officer as "Good hard", that is to say, physically fit for the hardest labour in the jail and was given grinding work. He never did the full task of 35 lbs. His actual turn out varied from 5 lbs. to 15 or at the most 20, and notwithstanding the warnings and other punishments he complained that he could not do the full task. But apart from short tasks or punishments on that account, there were no other grievances or defaults and no serious punishments for about a month after their arrival in the Bijapur Jail.

12. It is clear from the evidence that the grievances of Chavan and his two companions really began from the classing of their fellow-prisoners as "B" and their departure to other Jails. They felt that they themselves were also political prisoners and as such entitled to special treatment different from that of the ordinary prisoners in the "C" class. Chavan along with Parit now attempts to make out that after the departure of their companions, their treatment by the Jail authorities underwent, without rhyme or reason, a change for the worse. When we asked him to specify the alterations, three were placed before us. The first was that instead of being given sufficient time to obey the calls of nature as before, he was seized by the hand and dragged out of the latrine before he had really finished. The second was that the quantity of water he was allowed for bathing purposes was reduced, and the third was that he was not allowed to stroll after his meals. In fact Chavan did not specify these grievances even in his statement (exhibit 3) to the Home Minister when he was interviewed in Yeravda Jail on the 28th of May. He assigns no reason why the departure of his companions should have caused any difference to his own treatment in any of these three respects. He admits that he never complained about them even to the Jailor, much less to the Superintendent or a non-official visitor; and we have no doubt, from the very nature of these grievances, that they

are an after-thought to support his case. In fact the real grievance he himself admits in the following words :—

> " As we were sentenced for observing the Prisoners' Day, we considered ourselves political prisoners and therefore entitled to differential treatment not less than our comrades who had been classed as ' B ' and sent to other jails."

13. It appears from his history-ticket that after eight or ten days which elapsed after vaccination on entering the jail, Chavan had been put on grinding. On the 1st of April he was warned, on the 6th of April he received two nights handcuffs and on the 21st April he refused to do more than 15 lbs. and was warned again. All these punishments were for short task. On the 26th April he represented his real grievance and applied to Government to be placed in the " B " class, for according to his own statement " in 1938 I became one of the leaders ". On the 30th he applied to the Home Minister for permission to purchase the *Lokshakti* newspaper.

14. Similar petitions were made by his two companions, Ambaji Parit and Vyankappa Madur.

15. Whether trouble was brewing or not for at least two days before the 5th of May, as one of the prisoners at Nasik stated to us, the disturbance on the morning of the 5th of May as soon as the prisoners were taken out from the cells, the refusal to take food and the fact that not only Chavan and his two companions but also twelve other prisoners belonging to the Criminal Tribe Settlement took part are facts admitted by all the prisoners who have been examined including Chavan himself. We content ourselves with the following extracts from Chavan's own statement :—

> " We began the hunger-strike. After that we were kept in separate cells. In order to inform the other prisoners that I had begun the hunger strike, I shouted the slogan ' Victory to the Red Flag '. The other two (i.e. Parit and Madur) raised the same shouts and some nine or ten prisoners from the Criminal Settlement also joined in the hunger strike. They joined the hunger strike so that we might get the necessary facilities. We all shouted the slogans three or four times. After the Collector came, I shouted the slogan once."

16. The question naturally occurs how Chavan, Parit and Madur got the prisoners belonging to the Criminal Tribes

Settlement to join them; for, these at least never claimed to be political prisoners and therefore entitled to differential treatment. The grievance which they for the first time put forward on the 5th of May is on their own admission that though they had not committed thefts, merely because they belonged to the Criminal Tribes, they were classed as "habitual" and had to wear black caps like other habituals. They also now allege a breach of faith on the part of Government in not allowing 1,500 of the Criminal tribes to leave the Criminal Settlement at Sholapur. But none of them explained why these grievances which existed from the date of their admission to the jail, suddenly came to light on the 5th of May, six weeks afterwards. Chavan, the least reliable of the three, attempts to gloss over the matter and does not admit any pre-arrangement. But the matter is made clear by the other two prisoners and by some out of the Criminal Tribe Prisoners who joined them. Thus to quote from Ambaji's statement (Exhibit 4):—

> "We three and the prisoners from the Criminal Tribes Settlement, fifteen in all, told each other that we would go on hunger strike and we began the hunger strike at 7 a.m. In order that people should understand, first Gangaram and then all the rest of us shouted the slogan 'Victory to the Red Flag.' I told the Superintendent I would not pick up pots and plates at meal time or do any work."

17. Vyankappa Madur in his statement (Exhibit 5) states:—

> "As we did not get the necessary facilities in the jail we three resolved on the previous day to commence the hunger strike on the following day. As we were previously acquainted with the prisoners from the Criminal Tribes they used to regard us as leaders and follow us. On the morning of the 5th as soon as we three shouted the slogans, 10 or 12 prisoners from the Criminal Settlement also shouted the slogans."

18. Of all the Criminal Tribe Prisoners we examined at Nasik, the best in our opinion was the Haran-Shikari Ratan Kallu, who places the matter beyond doubt. He had no previous notice even of our visit, much less that we were going to examine him. He is now away from Bijapur and from any possible fear of the Jamadar or Superior officers of the Jail. After making every allowance for tribe, class and Jail habitation, we were better impressed by his demeanour than

that of any of the other prisoners. To quote at some length from his evidence :

"I know Gangaram Sadu Chavan. He is a Pardhi of the same caste as myself. I knew Chavan and Ambaji Parit before I was sent to the Jail. But I did not know Madur before. There was trouble brewing for about two days before Chavan was whipped."

19. After narrating some instances of slaps and injustice to himself by Jamadar Gaibusing and a Subordinate Havaldar and the reasons why he did not complain to the Jailor or the Superintendent, this witness Ratan proceeds as follows as to the events of the 5th May :—

"On that day we twelve and Chavan, Parit and Madur began Satyagraha. We had entered into a conspiracy (कट) at 5 p.m. on the previous day to perform Satyagraha. Ambaji Parit and Vyankappa Madur were the leaders of this Satyagraha and we decided that we would not take food from the following day. When we refused to take the food, Gaibusing Havaldar blew his whistle. The Jailor came. Parit and Madur placed their demands before him and we were placed in separate cells because the Jamadar must have been afraid as to whether we would not cause disturbance. The Jailor asked us 'why are you behaving like this ?' We said 'We have not committed thefts. Why do you give us black caps ?' I forgot to state that when we decided the previous day to perform Satyagraha we had decided to ask for the removal of our black caps. As the Jailor was going along we all shouted 'Success to the Red Flag, Success to the tricolour Flag'. After some time the Superintendent came and asked each one of us 'Why do you behave like this ?' In the same manner as the Jailor had asked us. The Jailor was with him. We said : 'Grant us our demands'. At that time we were all shouting 'Victory to the Red Flag, Victory to the Congress Flag'. The Superintendent tried to 'Samjav' (pacify) us and said 'Why do you behave like donkeys ?'. When the Superintendent came, the slogans stopped a while but again recommenced. After the Collector had gone round the corner, Gangaram Chavan shouted twice 'Inquilab Zindabad'. Thereupon Gaibusing Havaldar came running and seeing who had shouted told the Collector that Chavan was shouting and took him away."

20. It is now common ground that Chavan was taken into the Jail Office and questioned by the Superintendent in

the presence of the District Magistrate and the Jailor and the Jamadar and after some conversation, the nature of which is in dispute, the Superintendent sentenced him to nine stripes, drawing up a proceeding (Exhibit 29) as required by the rules, and the sentence was immediately carried out. The disturbance then stopped and other lighter sentences passed on the ring leaders were in fact remitted after a day or two as the other prisoners concerned promised to be of good behaviour and carried out their promise and there was no recurrence of the disturbance.

21. In fact there are at the most four points in dispute. The first is whether after the arrival of the District Magistrate the only shout was that admitted by Gangaram Chavan or whether there were also other shouts. The second is whether Gangaram on being brought into the office when asked to show cause why he should not be punished professed repentence and asked for pardon but was whipped nevertheless or whether he was recalcitrant and said defiantly "I am not afraid of any punishment." The third point is whether the prisoners belonging to the Criminal Tribes merely stated their objection to the colour of the caps or some of them actually threw them down. And fourthly generally speaking, whether the whole atmosphere was what might be called one of respectful protest or whether it was rather one of defiance and disturbance which threatened to spread and seriously affect the discipline of the Jail and might have even led to violence, calling for more drastic action than the flogging of a single prisoner.

22. On these four points not only is there the word of the Superintendent Dr. Henriques and of the District Magistrate Mr. Kothavala, supported by the Jailor and the Jamadar, but there are also records written (1) just before the flogging and (2) immediately afterwards before there was any question of inquiry or committee. The first (Exhibit 29) is headed "Details of Corporal Punishment" and constitutes the proceeding drawn up by the Superintendent at the very time in accordance with the law before the sentence of whipping was passed and carried out. The second consists of the Superintendent's report No. 1832, dated the 5th of May, to the Inspector-General of Prisons (Exhibit 31), giving an account of the disturbance which culminated in the whipping. The third consists of confidential reports made by the District Magistrate to Government and to the Inspector-General of Prisons on the 5th and 6th of May (Exhibits 32 and 33). All these records made at the time are opposed to Gangaram's

present version that his was the only shout after the District Magistrate came and that in the jail office before he was sentenced he asked for pardon and promised not to offend again. In respect of the shouts there is further the statement of a prisoner not at all concerned in the disturbance. We refer to Yamnya, one of the two prisoners we selected at random and examined in the Bijapur Jail. Yamnya does not belong to the Criminal Tribes and was not concerned in the disturbance. He was classed as "habitual" and wore a black cap not because he belonged to a criminal tribe but because this was his third conviction. He was sitting near the bathing platform when the disturbance began. But after the ten or twelve persons concerned had been put into separate cells and before the Superintendent arrived, he with others had been taken and locked up in the work shed and was doing weaving work when the District Magistrate came. His further statement is as follows :—

> "The District Magistrate told them that if they had any grievance he would try to redress it, but they again continued shouting 'Jay, Jay'. When the Collector came to the cell of the man who was whipped, he bagan to abuse the Collector. I say so because the Jailor said to him 'Collector Sahebku Kayku Gali Dete' (Why do you abuse the Collector) and I heard those words."

23. Though this prisoner confounds the District Magistrate's visits to the jail on the 6th and 7th of May and wrongly places them two days before instead of two days after the whipping of Chavan, our random selection eliminated any tutoring to this particular witness and in fact not even the authorities at Bijapur much less the prisoner, knew that Chavan had at Yeravda two days before denied that there were any shouts but his own after the arrival of the District Magistrate or affirmed that in the Jail office he had begged pardon before the sentence of whipping was passed. In fairness to Chavan it should be stated that the other prisoner we selected at random at Bijapur, Hussain, only heard the shouting of only one man i.e., presumably Chavan, after the arrival of the Collector. In the face of the overwhelming evidence to the contrary we cannot accept Chavan's word corroborated by this single witness.

24. It appears to us on the whole that though the shouting after the District Magistrate came was appreciably less than on the arrival of the Jailor and then of the Superintendent, the tactics adopted were for the prisoner to whom the District

Magistrate was speaking and for the prisoners near his cell to abstain from shouting while other prisoners whose cells could not be seen by the District Magistrate, raised some spasmodic shouts, so that they could neither be identified nor punished. In accordance with these tactics Gangaram Chavan did not shout until the District Magistrate and the Superintendent were well round the corner and unable to see him or his cell. Unfortunately for him the District Magistrate and the Superintendent saw through these tactics and when they again heard a shout coming from a distant corner, they at once sent a Havaldar to find out the offender or offenders. The Jamadar followed him. They caught Gangaram shouting and reported the matter to the District Magistrate. Gangaram was taken out of the cell and placed before the District Magistrate and the Superintendent in the Jail Office.

25. The more important question is whether Chavan before he was sentenced asked forgiveness or was defiant and recalcitrant. If Chavan's version is to be accepted, not only were the Superintendent and the District Magistrate obdurate but they even falsified the record and all this to the knowledge of the Jailor and the Jamadar.

26. It is impossible for us to believe that they would go to this length. We accept the word of the officers concerned, supported as it is by the record made at the time and immediately afterwards, and we hold that, as the proceedings (exhibit 29) of the Superintendent state, Chavan not only admitted the shouting but was defiant and said "I am not afraid of any punishment." It is possible that he anticipated, not whipping, but rather punishment in some other form and was prepared to bear the latter, in the same manner as Ambaji Parit, who, according to the report of the District Magistrate (exhibit 33) dated the 6th of May, did not eat his food, persisted in shouting that he would not obey, jail regulations and was rude to the Superintendent and was only given standing handcuffs for two days.

27. On the third point as to the actual throwing down of the black caps by the prisoners belonging to the Criminal Tribes, they all admit representing their grievance on the 5th May to the authorities concerned. The Superintendent's report No. 1832 of the 5th May (exhibit 31) uses the word "discard their black caps," supporting his statement and those of the District Magistrate, the Jailor and the Jamadar.

28. On the fourth and the last point, placing ourselves as far as we can on the scene and at the time, it is difficult

for us to say that the apprehensions of the Jail authorities were without grounds. The intentions of the prisoners and their next action could only be a matter of inference from their class, their gestures and their actual conduct. The prisoners were sitting in files near the bathing platform waiting for their turn. Suddenly some of the Criminal Tribe prisoners who were sitting in a separate file along with other habituals raised a shout. The Jamadar came to them to ask the reason. The shout was taken up by Chavan and Madur who left their own files and joined them. Parit who was then in a separate yard left his place in front of his cell in that yard and ran and joined them in the main yard. They all stood up with their pots and plates in their hands. There is no evidence that they had decided to go to the length of assaulting the Jamadar. Quite possibly they had no such intention. On the other hand the Jamadar was not in the secret of their conspiracy and of their intentions, and from their concerted action he might, not unreasonably anticipate and apprehend an actual assault as he says he did, when he blew his whistle. The prisoners concerned in this disturbance might well and for aught we know, truthfully assert their non-violent intentions. But the Jamadar with not less reason remembered that he was dealing with persons convicted of rioting and most of them belonging to the Criminal Tribes, so that a concerted attack on him with pots and plates would not be exactly a joke ; and he might reasonably decline to take any such chances and prefer to blow his whistle and while the night duty warders were still in the jail, summon all the assistance he could and have the prisoners locked in separate cells.

29. The most favourable view of the disturbance would be that the hunger strike and the slogans of ten or twelve prisoners could be sufficiently met by separate confinement with fetters and the other like punishments and that it need not have spread to others but would have remained non-violent and confined to these prisoners alone. But the other side is set forth in the reports and statements of the officials from the Jamadar upwards. Bijapur is a jail with a population of about 200 inmates, with a comparatively small number of warders to look after them. The jail suffers from the fact that there are not sufficient number of separate yards, prisoners are not properly separated and a great many of the cells are within seeing and hearing distance of each other. Concerted action on the part of the prisoners is therefore easier. This concert, it was clear, embraced not only Chavan, Parit and

Madur, but it also included twelve others belonging to the Criminal Tribes: The whole order of that day had been disturbed and the meals of all the prisoners already delayed by an hour or more by reason of the disturbance created by these twelve and by their persistence and declining to yield and to be pacified, not only by the Jailor but even by the Superintendent. The spirit was sought to be kept alive even after the arrival of the District Magistrate by slogans which could have no meaning except defiance.

30. Trying to place ourselves in that situation at that time in that spot and on that day rather than from the detachment of Poona today, we think that the atmosphere and the situation were strained and created in the minds of the jail authorities a not unreasonable apprehension of the spread of the disturbance and increasing disorder and interference with the routine of the order and the discipline of the jail. Even without attaching undue weight to circumstances such as the shaking of the bars of the separate cells by the prisoners confined and the shouting of slogans, it is difficult for us to arrive at any other conclusion. These being the circumstances we proceed to the question whether the order of whipping was proper and justifiable.

31. The disturbance had lasted for three hours; the Jailor had been unable to quell it; the Superintendent had equally failed; one of the three ring leaders was about to spit on him (exhibit 7). These fifteen persons were adjuring other prisoners not to touch their food by the filthy suggestions which appeal to that class of mind. The state of the Superintendent's mind can be judged from the fact that he went himself in his car to fetch the District Magistrate to the Jail. The District Magistrate's attempts at pacification had succeeded, if at all, only in part. The general attitude of each prisoner was in the case of some insolent, in the case of all defiant, and the slogans had not stopped. When we asked Gangaram why he and the others adopted this means of disturbance and defiance of the jail authorities, though they had no power to grant the prisoners' requests, whether for differential treatment or in respect of black caps, and why the prisoners had not waited for Government to pass orders for any special treatment they desired, the only reply of Gangaram was that " it was my mistake ". Placing ourselves on the other hand in the place of the Superintendent on whom lay the responsibility for discipline and order in the jail, a legitimate question which he could put was " What

was I to do ? " To leave matters alone and the disturbance and disorder unchecked was impossible. Other punishments such as fetters had been tried. It was clear that the Criminal Tribe prisoners were being incited by Chavan and others. The only doubtful point perhaps is whether Ambaji Parit by reason of his age and education was not really the leader rather than Chavan. If he was, he was clever enough not to be caught shouting like Chavan. It appears to us that the conduct of Chavan seriously affected the discipline of the jail and that he was inciting the Criminal Tribe prisoners to follow him in his own indiscipline by raking up grievances such as their black caps. Chavan's conduct, therefore, fell within the purview of rule 703 (14) (*c*) (*ii*) of Part I of the Bombay Jail Manual. The authority which imposed the whipping was the Superintendent. His average of whipping in Bijapur and other jails under his superintendence was about one a year. As far as we have been able to make out from the record of punishments in the case of Chavan and his two companions, he does not appear to have treated them with special harshness ; on the contrary, he contended himself, at least on one occasion, with a warning. Nor did he strike us as an officer likely to err on the side of severity—a conclusion fortified to some extent by his calling in the District Magistrate before he resorted to whipping and by his infliction of only nine stripes out of the maximum of thirty allowed.

32. Our answer to the first question referred to us, therefore, is that in view of Chavan's conduct which seriously affected the discipline of the jail and of his incitement of the nine prisoners of the Criminal Tribes and the possible spread of his defiant spirit and his conduct to others in the jail, the order of nine stripes was justifiable and under the circumstances not improper. We are unable ourselves to suggest any other punishment which the Superintendent could have imposed at the time with equal effect if order and discipline were to be maintained in the jail, especially when Chavan persisted in his defiance even when he was taken to the jail office. We do not think that Chavan or his companions had any real grievance against the jail authorities or their treatment in the jail. What they sought was a matter for Government alone and was quite outside the power of the jail authorities. The proper course for the prisoners who felt these grievances was to petition to Government and wait for Government orders on the point and not to refuse food, to defy jail discipline or to shout slogans and incite other prisoners as Gangaram did. To permit Gangaram and his companions to persist

not only in the hunger strike but also in their slogans and shouting would have been subversive of all jail discipline; and the disorder might have spread to the other prisoners in the jail.

33. The order of whipping was, therefore, within the law and not improper, being limited to nine stripes and inflicted only on the leader who had been caught in the act and was defiant to the last and one medically classed as "good hard."

34. Mr. Kothavala was himself present when Chavan was sentenced to whipping and the statement (Exhibit 12) which he has submitted to us on the 1st of June concludes as follows:—

> "I would request the committee to remove one misunderstanding that apparently finds a place amongst the press. It is presumed by all that I ordered whipping. My reports show I did not issue that order as I have no power to do so. In the circumstances of the case I agreed with the verdict of the Superintendent."

35. Mr. Kothavala was present in Bijapur; and when the Superintendent came to request his presence in the jail on account of the disturbance, he as District Magistrate could hardly refuse. Having gone there, he went round the cells, he satisfied himself by inquiry as to what the grievance of each prisoner was ascertained that they were beyond the power of the Superintendent or his own to redress immediately but must be a matter for petition to Government and for action by Government if so advised, and inform each prisoner accordingly, urging him in turn to give up his recalcitrant attitude. All this to our mind was quite proper. At the most, as the Superintendent says, he suggested a check to the game of shouting slogans when their backs were turned by sending a Havaldar to catch the offender. If game it was, Chavan should have been as prudent as Ambaji Parit and refrained from shouting. If Chavan was not, he has himself to thank for drawing special punishment down upon his own head. Whether the Superintendent should have taken steps without calling in the District Magistrate is a question, which hardly arises. But the District Magistrate had been called and had gone there. Having seen the state of things there he was right in remaining there, if as he says he approved though he did not suggest the sentence of whipping to the Superintendent. The legal responsibility for the sentence lies with the Superintendent alone. Of the moral responsibility the District Magistrate must in this case bear his share.

36. We now pass on to the second part of the reference, whether flogging as a jail punishment should be retained, and if so, under what circumstances and subject to what safeguards.

37. On this point we have examined the Superintendents of Yeravda Central Prison, Bijapur District Prison and Nasik Road Central Prison during our visits there, and have obtained the written statements of four senior Superintendents of other jails. We have also examined Lt.-Col. Jatar, I.M.S., C.I.E., the Inspector-General of Prisons, Central Provinces and Berar, who happened to be in Poona on leave, and was good enough to agree to give his evidence before us. We have also before us the valuable report of the Departmental Committee on Corporal Punishment, presented to Parliament in March 1938. We have also consulted the Report of the Indian Jails Committee appointed in 1920.

38. A few years ago the International Penal and Penitentiary Commission formulated a Code of Standard Minimum Rules for the Treatment of Prisoners (published by H. M. Stationery Office, 1936). Rule 36 contained the following statement of principle : " It is desirable to reach a stage where corporal punishment is no longer included in disciplinary punishments." These rules were approved by the Fifteenth Assembly of the League of Nations in 1934 and were recommended to the attention of Governments. They have been adopted by His Majesty's Government in the United Kingdom, but the question is whether the time has yet come when it is possible to dispense with corporal punishment as a penalty for offences against discipline in prisons.

39. Whipping in jails, from its very place in Section 46, clause 12 of the Prisons Act (IX of 1894), is evidently designed by the Legislature as the last punishment to which jail authorities should resort. In other words they must exhaust all other means before a prisoner is sentenced to whipping.

40. Lt.-Col. Jatar and all the Superintendents of Prisons are opposed to the abolition of flogging. The Departmental Committee in March 1938 have come to the conclusion that " it is essential to hold in reserve, as an ultimate sanction, the power to impose corporal punishment for serious offences against discipline in prisons." In paragraph 75 of their Report they observe :

> " We are thus satisfied that the fear of corporal punishment does exercise a strong deterrent influence in restraining

violent prisoners who would otherwise commit serious assaults on prison officers ; if no other penalty would operate as an equal, or sufficient deterrent."

41. Public sentiment is opposed to this punishment chiefly on humanitarian grounds ; but discipline in jails has to be maintained and Jail Officials protected from assaults by prisoners. Accordingly we do not think the time is come when we could recommend the abolition of whipping as a punishment in jails ; but we feel very strongly that its use should be restricted within the narrowest possible limits, and, therefore, we desire to recommend certain modifications in the existing rule.

42. The present rule which deals with whipping in jails is contained in Rule 703 (14) (*c*) in Chapter XXXIII of Part I of the Bombay Jail Manual, which we have already quoted in paragraph 6 above. It is based on the recommendations of the Indian Jails Committee of 1919 (Report pp. 133, 134, sections 227, 228). The present rule in England is to be found in Chapter 41, section 5, of the Prisons Act of 1898 (61 and 62 Victoria) :—

(1) Prison rules shall not authorize the infliction of corporal punishment—

(*a*) except in the case of a prisoner under sentence of penal servitude, or convicted of felony, or sentenced to hard labour ; nor

(*b*) except for mutiny, or incitement to mutiny, or gross personal violence to an officer or servant of the prison ; nor

(*c*) except by order of the board of visitors or visiting committee of the prison, after inquiry on oath held by them at a meeting specially summoned for the purpose, and consisting of not less than three persons, two of them being justices of the peace ; provided that the Secretary of State may, if he thinks fit, appoint a metropolitan police magistrate or stipendiary magistrate to take the place of the board or committee and the magistrate shall in any such case have the same power as the board or committee.

(2) An order under this section shall not be carried into effect until it has been confirmed by the Secretary of State, to whom a copy of the notes of evidence and a report of the sentence and of the grounds on which it was passed shall forthwith be furnished.

Such report shall be embodied in the annual report of the Prisons Commissioners."

43. It will be seen that compared with the Indian rule quoted in paragraph 6 above of our report, the English rule is more narrow and does not contain clauses (ii) and (iv) to section (*c*) of rule 703 (14) of the Bombay Jail Manual and that in England the Governor alone is not, as the Superintendent is in India, competent to award the punishment, or even to sit on the Board.

44. We see no reason why the Indian rule should not be narrowed to the English rule with a corresponding narrowing of the power of the Superintendent and with his association with two other members of a Board as the authority to award whipping in jail. The Indian sub-clauses (ii) and (iv) are in our opinion far too wide and devolve too great a responsibility on the Superintendent, as perhaps Dr. Henriques himself felt on the 5th of May. Accordingly we recommend that in rule 703 (14) (c) of the Bombay Jail Manual, Part I, p. 122, in clause (*i*) after the word "mutiny" the words "or incitement thereto" should be added, and sub-clauses (ii) and (iv) should be deleted in their entirety.

45. As regards the authority who should be empowered to pass the order of whipping, the witnesses consulted by us are not unanimous. One Superintendent states that previous sanction of the Inspector General of Prisons should be obtained. Another is of opinion that some local authority should be consulted. Lt.-Col. Jatar says that in the case of political prisoners, the sanction of the local Government should be necessary. We have every confidence that the Superintendents of Prisons can be trusted to use a wise discretion in the exercise of the powers ; but at the same time we feel that objection can be reasonably taken in theory to a system by which the power to impose this exceptional punishment is exercisable by the officials responsible for the prison administration. In view of the present state of public opinion, and in the interests of the Superintendents themselves, we do not think that they should be made to shoulder the sole responsibility of passing the sentence of whipping. Hence we recommend that a clause be added to rule 703 (14), somewhat corresponding to the English rule ; as follows :—

(*d*) Except in a case of emergency when there is no time to assemble a Board, whipping shall not be ordered by the Superintendent alone but by a Board of three members. One of them shall be the District Magistrate or the Sessions Judge, if either officer is in the station, and in their absence a Magistrate of the first class. Another shall be one of the

visitors of Prisons appointed under Chapter XVI of the Bombay Jail Manual, Part I. The Superintendent of the Prison may himself be a third member of the Board except when the offence is committed in his presence or he is required to give evidence before the Board. In such a case one of the other visitors will be the third member of the Board.

Colonel Bhandari is of opinion that the Superintendent should always be a member of the Board.

46. We have deliberately reserved the power with the Superintendent in case of emergency, but we are confident that there will hardly be occasion for him to exercise that power, since it will not be difficult for him to convene the necessary board.

47. In the same way in regard to the carrying out of a sentence of whipping we recommend the adoption of the English rule that such an order should not be carried into effect until it has been confirmed by Government, to whom a copy of the notes of evidence and a report of the sentence and of the grounds on which it was passed should forthwith be furnished through the Inspector General of Prisons, except where the sentencing authority is, for reasons to be stated by it in writing, clearly of opinion that the sentence should be carried out immediately.

48. Under the English rule, the sanction of the Secretary of State is necessary in all cases before the sentence of whipping is carried out. We have, however, recommended an exception in cases of emergency when the sentencing authority thinks it necessary to carry out the sentence at once, if it is to have the desired effect. The most important factor which may have to be considered in such cases is the attitude and temperament of the offending prisoners and of those other prisoners who, though mere spectators in the beginning, might succumb to the incitement and join the offenders. Prompt and stern action taken at the right moment may very often be the factor on which such prisoners take their decision, and this will not be possible if time is to be lost in waiting for the sanction.

49. In this connection, the question naturally arises, if the Prison authorities in England can in all cases wait for the sanction of the Secretary of State before carrying out the sentence of whipping, why it is not feasible for the jail authorities in India to adopt the same procedure. In our opinion, the conditions in the two countries are not alike.

The number of literate prisoners in the prisons in England is much larger than in Indian Jails, and most of them think and decide for themselves before they take part in creating any trouble in the jail, and would not blindly follow a discontented prisoner. If the mischief is confined to the discontented prisoner alone, it would be easy to keep him in check until the sanction is received. In India, however, the majority of prisoners are illiterate and ignorant, they are ready to join in any trouble in the jail without any personal grievance and are easily swayed by any disgruntled or mischievous prisoner. Often the mere fact that the leader belongs to their community, caste or creed is good enough for them to join him. In such cases prompt action is needed, if the trouble is to be nipped in the bud.

50. Along with these general recommendations we might refer to the question raised by the demand of Chavan and his two companions in the jail to be classed as " political prisoners ". But before we could make any recommendations in that respect or consider their exemption from whipping, we should have to define that term. The matter is not expressly referred to us. We have recorded no evidence on the point and upon the whole, therefore, we refrain from entering into that question and content ourselves with inviting the attention of Government to the recent legislation in other provinces such as the C. P. and Berar Prisons Amendment Bill (IX of 1938) which deals with the question of political prisoners. We leave it to Government to consider the question of similar legislation in this Presidency. The Superintendents here are unanimous that the definition or classification of political prisoners should not be left to the jail authorities and that such prisoners, if defined by legislation and classified by Courts, should be kept separate from other prisoners and should not be kept in the same jail or at least in the same yard with differential treatment. Such treatment causes discontent among other prisoners and might prove a fruitful source of trouble with results as in the case of Chavan.

51. In recommending the retention of corporal punishment, we have been influenced, not so much by its effect on the individual punished, as by the deterrent influence which the fear of it exercises on all prisoners, who might in its absence commit mutiny or serious assaults. The statistics supplied to us show that even under the existing rule it is sparingly used, and is held to reserve as the ultimate sanction by which

to enforce prison discipline and we hope that in course of time as the character of the prison population improves and there is less need for purely repressive measures, it may be found possible to dispense altogether with the use of this form of punishment, as has been done in some countries already.

52. We conclude with a summary of our recommendations :—

(*a*) Whipping as a jail punishment cannot be entirely abolished and should be retained but should be restricted to the following offences (1) mutiny and incitement to mutiny, and (2) serious assaults on any public servant or visitor.

(*b*) Except in a case of emergency, when there is no time to assemble a Board, whipping shall not be ordered by the Superintendent alone but by a Board of three members. One of them shall be the District Magistrate or the Sessions Judge, if either officer is in the station, and in their absence a Magistrate of the first class. Another shall be one of the visitors of Prisons appointed under Chapter XVI of the Bombay Jail Manual, Part I. The Superintendent of the Prison may himself be a third member of the Board except when the offence is committed in his presence or he is required to give evidence before the Board. In such a case one of the other visitors will be the third member of the Board.

(*c*) Before carrying out the sentence, the sanction of Government must be obtained except where the sentencing authority is, for reasons to be stated in writing, clearly of opinion that the sentence should be carried out immediately.

53. A separate minute by the Chairman is appended.

(Signed) G. D. MADGAVKAR,
Chairman.

(Signed) M. G. BHANDARI,
(Signed) N. S. LOKUR,
Members.

Poona, 23rd June 1938.

Chairman's Minute.

This separate minute is appended for two reasons. I take a somewhat broad view of the term "safeguard" in the second part of the reference to the committee. Without prejudice to our answer above to this second part, Government perhaps would agree that prevention is better than cure and that the occasions when the question whether flogging should be imposed arises should be minimised. If so, some more broad and general considerations necessarily arise and may be noted. The second reason is that in the light of my experience as visitor to prisons during an official career of nearly forty years I have never felt that the reformatory aspect of prison life was kept in view as much as it could be even on the present scale of expenditure. It is, moreover, a commonplace that persons whose duty it is to administer certain laws and rules are not necessarily the best persons to suggest reforms. They may sometimes even be the last. We are all accustomed, even without excessive egotism, to consider that everything is for the best in the system we are ourselves administering. I doubt, for instance, if a majority of judges who have passed sentences of death would be found to recommend its abolition as a penalty.

2. The question of whipping is, scientifically considered, a part of penology, itself a part of criminal law and administration, which are intimately connected with social conditions. Consciously or unconsciously, our conclusions really imply a philosophy and a background even if they are not deduced from a theory. Public opinion and the press usually oscillate between two extremes. Prisons are either places in which terrible tortures are inflicted upon the unfortunate inmates by callous and brutal officers; or they are luxurious establishments in which worthless offenders are petted and pampered at the public expense by a body of sentimental enthusiasts. In fact most of us are unable to make up our minds whether prison is a retribution or a deterrent or a reformatory. To a certain extent the last is not easily reconcileable even with the second, least of all with the first.

3. I fully realise the difficulties of the prison as a reformatory. The character of a person is almost formed by the time he is about sixteen years old. The ordinary prisoner does not desire to reform himself. His chief object is to get through the period of his sentence with as little trouble to

himself as possible. To him not less than to the idle rich, work is distasteful; and even when he is at liberty, it is at the best an evil, necessary in order to keep body and soul together.

4. The external difficulties are not less formidable. Prison as a reformatory means that both courts and jails will consider the offender much more than the offence. Machinery renders obsolete many of the handicrafts which could be taught in jails. The installation of machinery in prisons would be difficult even in a rich country such as Great Britain and much more so in India.

5. But with all these difficulties I am clear that imprisonment, while it has to be as deterrent as is necessary for the safety of society, should also try to direct the anti-social mentality of the criminal towards the attainment of social aims by useful and creative work and be as humane as possible. In other words society, even while it reluctantly and for self-preservation takes away liberty and inflicts imprisonment, has also and always to remember that it is one of its own members with which it is dealing and keep his reformation always in view as the end, to whatever extent, small or great, to be achieved. I base this view not merely on social and humane grounds but also on the enormous cost of prisons and prisoners. The deliberate production of humiliation is the last thing at which jails should aim. After all, imprisonment is itself ultimately corporal punishment in a definite sense. I cannot for a moment subscribe to that view of jail discipline which would accept as its motto *oderint dum metuant* (let them hate me so long as they fear me) or that the jailor should be encouraged to think of himself as the monarch of all he surveys and the cowering inmates should not dare to raise their eyes above the latches of his shoes. Discipline in the sense of order and obedience to that order are always necessary in jails, as for the matter of that in any other institution, such as a school or a regiment, unless complete anarchy is to prevail. But military discipline is not the only variety. Its ultimate aim is to train men to act together as a body and the military mind is apt to mistake the mechanical expression of outward respect for the true spirit of discipline and is inclined to lay undue stress upon uniformity. But the aim of penal discipline should be, as in schools, to train the men to act apart as they will have to a large extent on release, in other words to teach them to discipline themselves as members of a society based on co-operation, work and mutual usefulness.

6. To put my own view shortly : whatever the difficulties, psychological and economic, internal and external, the ideal for jail discipline as far as practicable, should be, in my opinion, the maximum of the reformatory and the minimum of the deterrent element in prison life. Order and discipline by all means, but in this sense above, as a training for self-discipline : there should be an attempt to make the inmates realise that jail rules and regulations are as much in the collective interests of the prisoners and of their comfort as in the interests of the jail authorities ; respect with the minimum of fear and maximum of appreciation, not only of the justice, but above all of the humanity of jails and jail authorities. The prisoner need not cherish any illusions that he will cajole the jail authorities into condoning a breach of the rules. But he should also have a feeling that, consistently with obedience to the rules, he has in the jailor neither a bully, a tyrant, nor an enemy but a friend who, if only on the ground of their common humanity, would always be glad to help him to the utmost extent that the jail rules permit. I realise that this spirit and these aims are not always easily to be secured in jailors. But I consider it my duty to emphasize the fact that all rules and regulations in jails as outside, about whipping or any other punishment, have to be administered by officials to whom a certain amount of discretion must necessarily be left and that the quality of the officer in whom is vested the power to inflict or cause to be inflicted the punishment is not less material than the rule itself. Particularly in District Jails, the personality of the Jailor as the highest whole-time officer and one with the most contact with the prisoners is all important. But education and culture, a conviction that their common humanity is a stronger bond than differences of caste or class, creed or colour, law-abiding character or the opposite, and consequent interest in the reformatory element of his work—all these are in my opinion as essential qualifications whether for a Superintendent or for a Jailor as the strength to enforce jail rules and regulations and discipline. These are all qualities which should be easily available in India, even with the present pay of Jailors, particularly in these days of unemployment. If prevention is better than cure, if the occasions when it is necessary to consider the question of infliction of whipping are to be as few and far between as possible, then the personality and the spirit of the Jailor, from whom warders take their cue and Superintendents receive their reports, are elements as important as the laws and rules which Government frame in this regard. Without

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casting any aspersions, personal or racial, I am not convinced, I regret, that the importance of this question has been appreciated in the past by the authorities responsible for such appointments. And I recommend rules and an authority which, as vacancies occur, will ensure such a selection of Jailors, as will increase the reformatory spirit in jails and minimise the occasions when the question of the necessity of whipping will at all arise.

(Signed) G. D. MADGAVKAR,
Chairman.

23rd June 1938.

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